

February 4, 2006

NEPA Draft Report Comments  
c/o NEPA Task Force  
Committee on Resources

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Following are my comment on the Draft Recommendations and Initial Findings of the Committee on Resources, U.S. House of Representatives, and dated 12/21/05.

Recommendations 1.2 – This overall codification of timelines flies in the face of everything NEPA is to accomplish. Timelines could easily and arbitrarily be missed just due to any agency announcing a project then either purposely or non-purposely not assigning enough resources to complete it within a timeframe. What happens then? Inadequate information resulting in bad decisions costing taxpayers millions and the environment untold and unrecognized harm.

As an example, on bad fire years or for a Katrina type incident, federal agency staff can be detailed to emergencies for months on end. These same staff would often be involved in one or more NEPA documents. All of these projects would then have to be referred to CEQ for extensions. And what if an agency announces a project and fails to act on it before the time limit. At the end, they could make a decision based on the information completed to date? That is a giant loop hole. Was it intentional?

Recommendation 2.1 – It is totally unfair and goes against everything the USA stands for to allow a weighting system to determine which comments are more valid or valuable when discussing federal projects under NEPA. Citizens in the eastern half of the country, which has relatively few public lands are disenfranchised under this system, even though they may have just as strong of a connection with a place out west then would many westerners. They may have once lived there, they may be moving there, they may regularly and frequently visit there, they may have done scientific research there, they may have worked there, or they just might care about it.

This is a bad proposal that does little to enhance public participation but rather limits such participation to a large majority of Americans on any given project. This does not even discuss how you are going to determine “local”. Your assumption that because you do not live “local” that you would not be affected by a federal proposal is sorely off base. In addition, groups or organizations will just submit comments under a local name and address, getting around the whole mess anyway.

Recommendation 3.1 – Basically this recommendation goes against Group 1 – delays in process. Many local governments, some states and many tribes are not set up and do not have the skills necessary to be a cooperating agency on NEPA projects. Who ever has the lead on the project will have to spend considerable time and energy to bring them up to speed on process. This recommendation could slow the process so much that recommendation 1.2 would then kick in, and there would be no real progress.

Litigation and appeals in general – one of the major reasons for appeals and subsequent litigations is that agencies often do not follow the regulations and procedures mandated by CEQ or their own regulations, and hence set themselves up for appeal. They do this for a variety of reasons including political pressure, their own biases, time restraints, public pressure, risk taking, etc.

Generally, there are NO penalties or consequences for agency staff that approve NEPA documents that are substandard and that are later overturned on appeal or in litigations. Until this issue is addressed, agencies will continue to “push the limits” on what they can get away with on NEPA. The fact that poor analysis leads to decisions from courts that affect other government agencies is a byproduct of sloppy work to begin with and is a consequence that agencies refuse to deal with.

Recommendation 5.1 – This is the recommendation that is most likely to gut NEPA out of all of those you have proposed. Be real. People and jobs are effected all the time and placing a restraint on alternatives that may effect job loss or “effects on communities” is absurd. It is like saying congress can pass no legislation that has negative effects on communities. Not much will happen and that appears to be your objective here – no alternatives. Very bad policy!

Group 8 appears to me to be an attempt to gut cumulative effects analysis as a part of NEPA. Stating that existing condition can serve as a baseline for past actions allows for a continual decline in the overall health of the environment through a series of project or events because of a moving target, i.e. baseline conditions. Looking at only concrete proposed actions instead of reasonably foreseeable actions will limit cumulative effects of future actions unnecessarily and will again serve to gut an important analysis tool of NEPA. You are doing this with no study or data on just how many reasonably foreseeable actions do not, on average, occur. I suggest that most do occur and that you are trying to limit the analysis by raising a standard with no supporting documentation or logic to support it.

CEQ – under your proposal, CEQ will become some NEPA super agency with significantly enhanced responsibilities. All of the additional requirements for CEQ involvement in NEPA preparation will likely slow the process even more than it is.

In summary, I am very disappointed about your recommendations for change. All of the talk about improving NEPA appears to have gone astray in an attempt to make NEPA nothing more than a paper exercise and a rubber stamp. You have not addressed several known problems with NEPA, i.e. poor agency performance; lack of funding for NEPA and agencies in general; political pressure during the NEPA process; accounting for the tremendous savings in federal and private money due to NEPA planning; failure to account for the environmental benefits of the existing NEPA program.

If these regulations are installed, the next democratic administration will simply abandon them for a new set. This roller coaster ride of changing administrations and requirements is another reason why NEPA does not work. Take the high road if you mean what you say and formulate a set of regulations that are fair and proper, recognize real problems with NEPA and that will provide stability in NEPA implementation beyond the current administration.

Thank you for the opportunity to comment.

Sincerely,

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